

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Civil File No. 08-0972 (JNE/RLE)

Jeff Seipel and Tom Vevea, as Trustees of the Minnesota Laborers Health and Welfare Fund and Minnesota Laborers Pension Fund; James Brady and Keith Kramer, as Trustees of the Minnesota Laborers Vacation Fund; Tom Vevea and Gary Reed, as Trustees of the Construction Laborers Education, Training, and Apprenticeship Fund of Minnesota and North Dakota; and Ronald Thornburg and Cindy Ecklund, as Trustees of the Minnesota Laborers Employers Cooperation and Education Trust; and each of their successors,

Plaintiffs,

v.

Visser Scraper Service LLC,

Defendant.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER FOR ENTRY OF DEFAULT**

Amy L. Court, Esq., McGrann Shea Anderson Carnival Straughn & Lamb, Chartered, appeared on behalf of the Plaintiffs Jeff Seipel and Tom Vevea, as Trustees of the Minnesota Laborers Health and Welfare Fund and Minnesota Laborers Pension Fund; James Brady and Keith Kramer, as Trustees of the Minnesota Laborers Vacation Fund; Tom Vevea and Gary Reed, as Trustees of the Construction Laborers Education, Training, and Apprenticeship Fund of Minnesota and North Dakota; and Ronald Thornburg and Cindy Ecklund, as Trustees of the Minnesota Laborers Employers Cooperation and Education Trust; and each of their successors.

There was no appearance by counsel on behalf of the Defendant Visser Scraper Service LLC. Alan Sjoborg, Secretary of Visser Scraper Service LLC, was present on behalf of Visser Scraper Service LLC.

This case is before the Court on Plaintiffs' motion for entry of default. Upon all files, records, and proceedings herein, the Court makes the following findings of fact, conclusions of law, and Order.

FINDINGS OF FACT

1. The Summons and Complaint were filed with the Court on April 7, 2008. Service on Defendant was accomplished on April 10, 2008.

2. Defendant failed to file and serve a response or Answer to the Summons and Complaint.

3. Plaintiffs are trustees and fiduciaries of the Minnesota Laborers Health and Welfare Fund, Minnesota Laborers Pension Fund, Minnesota Laborers Vacation Fund, Construction Laborers Education, Training, and Apprenticeship Fund of Minnesota and North Dakota, and Minnesota Laborers Employers Cooperation and Education Trust (hereinafter "Funds"). The Funds are multi-employer plans as defined by 29 U.S.C. § 1002(37) (2000). The Funds are established to provide, *inter-alia*, pension, health, welfare, and vacation benefits, as well as training to employees doing laborers work in the construction trades. The Funds are maintained for the benefit of workers pursuant to a Collective Bargaining Agreement. All contributions must be made to the administrative agent designated by the Trustees: Zenith Administrators, 2520 Pilot Knob Road, Suite 325, Mendota Heights, Minnesota 55120.

4. Defendant is bound to a Collective Bargaining Agreement between the Highway, Railroad, and Heavy Construction Contractors and the Laborers' District Council of Minnesota and North Dakota and its affiliated Unions.

5. The Collective Bargaining Agreement obligates Defendant, as an employer, to compute the contribution for each employee, submit that information on a report form, and pay those contributions to the Funds' agent on or before the 15th day of the month following the month for which the contribution is being made.

6. The Collective Bargaining Agreement and Trust Agreements provide that an employer is liable for liquidated damages in the amount of 10% of all fringe benefit contributions not timely submitted. The Collective Bargaining Agreement also provides that Plaintiffs are entitled to their attorney fees and costs incurred in collecting the delinquency.

7. Defendant failed to submit the fringe fund reports and contributions for the months of November 2007, December 2007, January 2008, February 2008, March 2008, April 2008, and May 2008, as required by the Collective Bargaining Agreement.

8. At the hearing on the pending motion, Defendant, through the appearance of its Secretary, Alan Sjoberg, submitted the fringe benefit reports for the months of November 2007, December 2007, January 2008, February 2008, March 2008, April 2008, and May 2008, but Defendant failed to pay contributions due per those reports.

CONCLUSIONS OF LAW

1. Defendant is in default, and Plaintiffs are entitled to Entry of Default.
2. Defendant is required to submit payment to Plaintiffs for the fringe benefit contributions due per the reports for the months of November 2007, December 2007, January 2008, February 2008, March 2008, April 2008, and May 2008.
3. Defendant is obligated to pay to the Funds liquidated damages in accordance with the Collective Bargaining Agreement and Trust Agreements.
4. Defendant is obligated to pay to the Funds attorney fees and cost incurred in collecting the delinquency.

ORDER

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Plaintiffs' Motion for Entry of Default [Docket No. 6] is granted.
2. Defendant shall pay to Plaintiffs the fringe benefit contributions due for all of the hours reported for the months of November 2007, December 2007, January 2008, February 2008, March 2008, April 2008, and May 2008, plus liquidated damages in the amount of 10% of the delinquent fringe benefit contributions for the months of November 2007, December 2007, January 2008, February 2008, March 2008, April 2008, and May 2008.
3. If Defendant fails to make payments required by this Order for the months of November 2007, December 2007, January 2008, February 2008, March 2008, April 2008, and May 2008, Plaintiffs may move the Court for entry of a money judgment against Defendant in the amount of any unpaid fringe benefit contributions, liquidated damages, and reasonable attorney fees and costs, as shown by affidavit filed with the Court, and the Court shall enter judgment ten days after service of the motion and affidavit on Defendant.

Dated: July 16, 2008

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge